

Internal Revenue Service

District Director

Department of the Treasury

[REDACTED]

Person to Contact:

Telephone Number:

Date: MAR 19 1996

FILE  
COPIES [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986.

You were incorporated on [REDACTED] in the [REDACTED] as a non-profit public benefit corporation, to help in the revitalization plans for the [REDACTED] area of [REDACTED]. You have indicated the area does not have historic designation and is not an economically depressed area.

You have listed your specific purposes as the following: to protect and enhance [REDACTED] historically and culturally significant downtown commercial area. The area is threatened by the increasing flight of downtown merchants, which has rendered the downtown area vulnerable to deterioration and ultimately, the loss of structures. Your organization seeks to reverse this with activities to preserve the traditional downtown area as a healthy, economically vital center of commerce and social activity. Also, your organization seeks to promote preservation, rehabilitation and reuse of the commercial, civic, residential and religious buildings in the traditional business district.

You plan to accomplish your goals by implementing a four part program comprising design, organization, promotion, and economic enhancement. Flyers accompanying your application describe the four elements as follows:

Design involves improving the image of downtown by enhancing its physical appearance, not only of buildings, but also of streetlights, window displays, parking areas, signs, public areas, sidewalks, alleyways, and promotional material.

Organization means building consensus and cooperation among the groups that play roles in downtown many of whom have a stake in the economic viability of the area including: bankers, property owners, city and county officials, merchants, downtown residents, chamber of commerce officials, local industries, civic groups, historic societies, schools, consumers, realtors, and the media.

Promotion involves the marketing of the downtown's unique characteristics to shoppers, investors, new businesses, tourists, and others.

Economic Enhancement or Development means strengthening the existing economic base of the downtown while diversifying it. Activities include helping existing downtown businesses compete and expand through training, technical assistance, employing effective advertising and marketing strategies; recruiting new businesses; converting unused and vacant space into productive property; working with community development organizations to plan for strength and growth of the larger community.

Newspaper articles accompanying your application state the primary audience of your program is the downtown business and property owners and the ultimate goal is to strengthen the local economy.

Correspondence from you dated [REDACTED], details some of the activities that the organization has been involved in as described below:

Education/Preservation Awareness Programs, Architectural Guides - Written material available through your organization from the [REDACTED]. The material is made available to anyone interested without charge, except for copying.

Workshops - those listed included:

"Retailing in the '90's" - A seminar that focuses on how to meet the competition from large discount businesses. Information included: strategies on how to identify your place in the market, identify customers and their needs, and learning competitive strategies; how to use effective advertising and promotions to bring in new customers; handling common customer complaints and how to prevent losing customers; developing store policies and practices that are customer centered; and how to ensure customer service.

"Professionalism in the Workplace" - Developed to impart skills of accepted business behavior. Topics covered included the office environment (decor, signage, customer service), professional image (dressing professionally, positive non-verbal communication, business etiquette), and customer relations.

Walking Tours, Heritage Events - These are events envisioned as part of [REDACTED] centennial celebration in [REDACTED]

Promotion of Festivals - Involves your organization participating in festivals conducted by other organizations and which are designed as a source of entertainment for the local population and to tourists.

Main Street [REDACTED] Promotions - which includes the following:

The Labor Day rally of antique and customized cars, where in addition to the car show, bands were provided for dancing, street performers for other entertainment and vendors for refreshments.

Christmas Tour of Homes - Tour of homes the owners have agreed to decorate sometimes using decorators, gift shops and/or florist who may wish to participate in the event, by helping the home owners decorate.

Main Street [REDACTED] Coffees - A social mixer hosted by a different group or individual each week to give people the opportunity to meet elected officials, and community and business leaders from Mena and other areas.

Design Function - You organization calls upon the services of Main Street [REDACTED], a division of the [REDACTED] Historic Preservation program to provide architectural advice and assistance to property owners that request the service. Seven facades in [REDACTED] have been restored in the last two years by the property owners using this service.

Economic Enhancement - Training seminars and technical assistance in advertising and marketing strategies designed to keep downtown competitive, and help in recruiting new businesses.

Section 501(c)(3) of the Internal Revenue Code provides for recognition of exemption from Federal income tax of organizations which are organized and operated exclusively for, among other things, charitable or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1a(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more purposes specified in that section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized exclusively for any of the purposes specified in section 501(c)(3) unless it serves public, rather than private interests. Thus, an organization applying for tax exemption under section 501(c)(3) must establish that it is not organized or operated for the benefit of private interests.

The Supreme Court held in Better Business Bureau v. United States, 326 U.S. 279 (1945), that a single nonexempt purpose, if substantial in nature, would preclude an organization from qualifying under section 501(c)(3) of the Code.

In Public Industries, Inc., 61 TCM 1626, Dec. 47,104(M), TC Memo. 1991-3, The court said: "... in order for an organization to "lessen the burdens of government," among other things, the organization must engage in activities that a governmental unit considers to be its burden and the governmental unit must recognize the organization as acting on its behalf. (2) the organization's performance of these activities actually lessens the burden of Government..."

In Columbia Park & Recreation Assn. v. Commissioner [Dec. 43,601], 88 T.C. 1, 21 (1987), ~~affd.~~ without published opinion 838 F.2d 465 (4th Cir. 1988), the court stated on the issue of "lessening the burdens of government", "... the mere fact that such activities might improve the general economic well-being of the Nation or a State or reduce any adverse impact from the failure of Government to carry out such activities is not enough... "

Rev. Rul. 85-1, 1985-1 CB 177 held that the criteria to determine whether an activity lessens the burdens of government are: "... first, whether the governmental unit considers the organization's activities to be its burden; and second, whether these activities actually lessen the burden of the governmental unit. An activity is a burden of the government if there is an objective manifestation by the governmental unit that it considers the activities of the organization to be its burden... ."

Rev. Rul 85-2, 1985-1 CB 176 held that "... to determine whether an activity is a burden of government, the question to be answered is whether there is an objective manifestation by the government that it considers such activity to be part of its burden. The fact that an organization is engaged in an activity that is sometimes undertaken by the government is insufficient to establish a burden of government. Similarly, the fact that the government or an official of the government expresses approval of an organization and its activities is also not sufficient to establish that the organization is lessening the burdens of government... ."

Rev. Rul. 74-587, 1974-2 C.B. 162, held exempt an organization that was providing financial assistance to business enterprises in economically depressed areas through low-cost or long-term loans, or through the purchase of equity interests in the business being assisted.

Rev. Rul. 76-419, 1976-2 C.B. 146, exempted an organization that utilized favorable lease terms as an inducement for business enterprises to locate in industrial parks in an economically depressed area, which would result in the hiring and training of the underemployed and unemployed in the area. (Note that Rev. Rul. 81-284, 1981-2 C.B. 130 amplified Rev. Rul 74-587.)

Rev. Rul. 77-111, 1977-1 C.B. 144, involved two organizations. The first was formed to increase business patronage in a deteriorated area by providing information on the area's shopping opportunities, local transportation, and accommodations. The second organization's purpose was to revive retail sales in an area of economic decline by constructing a shopping center that would complement the area's existing retail facilities. Neither organization was held to be exempt, because neither organization targeted minority-owned businesses. The organizations both operated in a depressed area, but neither limited their benefits to needy individuals or businesses.

Rev. Rul 75-470, 1975-2 C.B. 207, held that a nonprofit organization formed to promote an appreciation of history through the acquisition, restoration, and preservation of homes, churches, and public buildings having special historical significance or architectural significance and to open the structures for viewing by the public qualifies for exemption under section 501(c)(3) of the Code.

Rev. Rul. 86-49, 1986-1 C.B. 243, held that an organization formed for the purpose of preserving the historic or architectural character of a community through the acquisition and occasional restoration of historically or architecturally significant properties, and subsequent disposition of these properties subject to restrictive covenants qualifies for exemption under section 501(c)(3) of the Code.

In Rev. Rul. 74-587, above, the organization not only targeted its programs to high density urban areas inhabited by mainly low-income groups, it also restricted eligibility for its programs to businesses that could not otherwise obtain funds through conventional commercial sources because of the financial risks, or because of being a member of a minority or other disadvantaged group. Similarly, in Rev. Rul 76-419, above, the organization not only located its industrial parks in a blighted area, it also gave preference to prospective tenants with hiring policies conforming to current fair employment legislation, and which agreed to hire a significant number of presently unemployed persons in the area and to train them in needed skills.

In contrast to Rev. Rul 74-587 and 76-419, you have indicated the targeted group to benefit mostly will be the businesses located in the downtown area of [REDACTED]. Furthermore, there are no eligibility requirements to be a member of your organization, and you have not provided any demographic, or statistical data, or other documentation to demonstrate that the area is a depressed area.

On the basis of these rulings, we conclude that your organization does not combat community deterioration, within the meaning of section 501(c)(3) of the Code.

Though you have indicated that you are part of the national Main Street program, you have provided no evidence that any of the buildings that you might be helping to revitalize are listed on "the National Register." Nor have you provided evidence that any of these buildings have either historical or architectural significance. Rev. Rul 75-470, above, and Rev. Rul. 86-49, above, both limit exemption to organizations preserving buildings with historical or architectural significance. In addition, you have offered no documentation that you are actually preserving or restoring structures. The response in your [REDACTED] letter indicates that your activities in this area are confined to providing copies of architectural guides obtained through the National Main Street Program, to property owners who request them.

On the basis of these rulings, we conclude that your organization is not organized and operated for historic preservation purposes, within the meaning of section 501(c)(3) of the Code.

In contrast to Rev. Rul. 85-1, above and Rev. Rul. 85-2, above, you have provided no evidence that any of your activities actually lessen the burdens of government. You have provided no documentation to show an objective manifestation by a governmental unit that it considers any of your activities to be a part of its burden. Like the organization in Public Industries, Inc. v. Commissioner, you have not shown that any of your activities have been recognized by a governmental unit as their burden, and that performance of these activities would actually lessen its burden.

On the basis of these rulings, we conclude that your organization is not organized and operated for the purpose of lessening the burdens of government, within the meaning of section 501(c)(3) of the Code.

Your revitalization program is primarily designed to benefit the downtown business and this is not an exempt activity. Therefore, according to section 1.501(c)(3)-1(c)(1) of the regulations, you cannot be regarded as "operated exclusively" for one or more exempt purposes because more than an insubstantial part of your activities is not in furtherance of an exempt purpose. This nonexempt purpose is sufficient in degree to preclude you from qualifying for tax exemption under the rationale of Better Business Bureau v. United States.

Furthermore, while your downtown revitalization program does have some broad public benefit, it also results in direct and substantial private benefit to the downtown businesses within the meaning of section 1.501(c)(3)(d)(1)(ii) of the regulations.

Because you fail to meet the operational test described in the regulations, you are not exempt from income tax under section 501(c)(3) of the Code.

Classification under either section 501(c)(4) or section 501(c)(6) of the Code was mentioned in our letter 1312 to the organization, dated September 21, 1995, and discussed with your authorized representative. The organization has clearly indicated, both in writing and through its authorized representative, that it does not wish to pursue exemption under any other section of the Code. Consequently, you are not exempt under any other section of the Code. Contributions to you are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Form 1120.

If you do not agree with our proposed denial, we recommend that you request a conference with a member of the Regional Director of Appeals Staff. Your request for a conference should include a written appeal signed by an authorized officer giving the facts, law and any other pertinent information to support your position as explained in the enclosed Publication 892. If you are represented by someone who is not one of your authorized officers, he/she will need to file a power of attorney authorization and be qualified to practice before the Internal Revenue Service as provided in Treasury Department Circular No. 230. The conference may be held at the Regional Office or, if you request, at any mutually convenient District office.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become our final determination on this matter. Also, appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

Because this letter could help resolve any questions about your exempt status, you should keep it in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Paul M. Harrington  
District Director

Enclosure:  
Publication 892